

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 19, 2003

Division: Public Works

Bulk Item: Yes X No     

Department: Engineering

**AGENDA ITEM WORDING:** Approval to execute STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT with the State of Florida Department of Transportation to undertake the maintenance and operation of lighting on the State Highway System.

**ITEM BACKGROUND:** Monroe County has an agreement with FDOT to maintain street lights on US 1 throughout the Keys, excluding Marathon. We currently do not receive any funds for this service. This agreement will provide for funding for that work we are currently providing.

**PREVIOUS RELEVANT BOCC ACTION:** The BOCC approved a Joint Project Agreement, Highway Lighting, with the FDOT on January 30, 1991, amended August 15, 1995, and again September 20, 2000.

**CONTRACT/AGREEMENT CHANGES:** FDOT agrees to pay Monroe County a lump sum of \$11,962.50 for the FDOT fiscal year this agreement is signed. Future fiscal years to be agreed upon by the FDOT and Monroe County prior to the beginning of the fiscal year.

**STAFF RECOMMENDATIONS:** Approval as stated above.

**TOTAL COST/REVENUE :** \$11,962.50 **BUDGETED:** Yes      No X

**COST TO COUNTY:** -0- **SOURCE OF FUNDS:** REVENUE – Road and Bridge

**REVENUE PRODUCING:** Yes X No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**ITEM PREPARED BY:** David S. Koppel  
David S. Koppel, County Engineer

**DIVISION DIRECTOR APPROVAL:** Dent Pierce  
Dent Pierce

**DOCUMENTATION:** Included X To Follow      Not Required     

**DISPOSITION:**     

**AGENDA ITEM #** D-27

# MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

## CONTRACT MODIFICATION SUMMARY

Contract with: State of Florida Department of Transportation Contract No. BD562

Effective Date: Upon execution

Expiration Date: Indefinite

Contract Purpose/Description: Department of Transportation is requesting Monroe County execute a State Highway Lighting, Maintenance, and Compensation Agreements which Will allow Monroe County to be compensated for maintaining highway lighting on the State highway system.

Contract Manager: David S. Koppel, PE 4426 Engineering / #1  
 (Name) (Ext.) (Department/Stop #)

For BOCC meeting on 02/19/03 Agenda Deadline: 02/05/03

## CONTRACT COSTS/REVENUE

Total Dollar Value of Contract: \$ 11,962.50 Current Year Portion: \$ 11,962.50

Budgeted? Yes ☐ No ☒ Account Codes: \_\_\_\_\_

Grant: \$ -0- \_\_\_\_\_

County Match: \$ -0- \_\_\_\_\_

## ADDITIONAL COSTS

Estimated Ongoing Costs: \$ \_\_\_\_\_/yr For: \_\_\_\_\_  
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

## CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>2/13/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Dent Pierce/BE</u>	<u>2/13/03</u>
Risk Management		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Bill Gumb</u>	<u>2/3/03</u>
O.M.B./Purchasing	<u>2/4/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Shirley A. Barker</u>	<u>2-3-03</u>
County Attorney	<u>2-5-03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>2-5-03</u>

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
AGREEMENT**

Form No 710-010-30.  
Utilities  
Rev. 08-02

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, year of \_\_\_\_\_, by and between the  
**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**FDOT**", and  
Monroe County, hereinafter referred to as the  
"**MAINTAINING AGENCY**";

**WITNESSETH:**

**WHEREAS**, the **MAINTAINING AGENCY** has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System, and the **FDOT** is authorized under Sections 334.044, Florida Statutes and 335.055, Florida Statutes to enter into this Agreement; and

**WHEREAS**, the **MAINTAINING AGENCY** has authorized its undersigned officers to enter into and execute this Agreement, and has designated the officer(s) authorized to receive and respond to the **FDOT's** work orders;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **MAINTAINING AGENCY** hereby agree as follows:

**1. Maintenance of Facilities**

- a. The **MAINTAINING AGENCY** shall maintain all the lighting now or hereafter located on the State Highway System within the jurisdictional boundaries of the **MAINTAINING AGENCY**, hereinafter referred to as the "Facilities," throughout its expected useful life. For the purposes of this Agreement, the term Facilities shall be deemed to include, but not necessarily be limited to, lighting for roadways, as well as park and ride, pedestrian overpasses, and recreational areas owned by or located on the property of the **FDOT**, but shall exclude those systems listed in Exhibit "A" attached hereto and by this reference made a part hereof, and shall exclude lighting located in weigh stations, rest areas, or on Interstate highways.
- b. In maintaining the Facilities, the **MAINTAINING AGENCY** shall perform all activities necessary to keep the Facilities fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type (ex. high mast, standard, underdeck, sign) or roadway system at all times for their normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance shall include, but shall not be limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the Facilities, as may be necessary.
- c. All maintenance shall be in accordance with the provisions of the following:
  - (1) Manual of Uniform Traffic Control Devices; and,
  - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and **FDOT** procedures.
- d. For lighting installed as part of an **FDOT** project, the **MAINTAINING AGENCY's** obligation to maintain shall commence upon the **MAINTAINING AGENCY's** receipt of notification from the **FDOT** that the **FDOT** has finally accepted the project, except for the obligation to provide for electrical power, which obligation to provide for electrical power shall commence at such time as the lighting system is ready to be energized; provided, however, that the **MAINTAINING AGENCY** shall not be required to perform any activities which are the responsibilities of **FDOT's** contractor.

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- e. The continuing obligations under this paragraph 1 beyond the first fiscal year hereof are subject to the voluntary negotiation of the amount to be paid as set forth in subparagraph 2b hereof.

**2. Compensation and Payment**

- a. The **FDOT** agrees to pay to the **MAINTAINING AGENCY** a lump sum of \$ 11,962.50 for the fiscal year in which this Agreement is signed (fiscal year as referenced in this Agreement shall be **FDOT's** fiscal year).
- b. For each future fiscal year, the **FDOT** and the **MAINTAINING AGENCY** shall agree on the amount to be paid prior to the fiscal year beginning. The **FDOT** will issue a work order confirming the amount and authorizing the performance of maintenance for each new fiscal year.
- c. Invoices may be submitted anytime after May 19<sup>th</sup> of the fiscal year in which the services were provided, but no later than 180 days after the end of said fiscal year. Payment shall be made in one lump sum as provided in paragraph 4 hereof.
- d. Payment shall be made in accordance with Section 215.422, Florida Statutes.
- e. Bills for fees or other compensation for services or expenses shall be submitted in a format acceptable to the **FDOT** and in detail sufficient for a proper pre-audit and post-audit thereof.

**3. Record Keeping**

The **MAINTAINING AGENCY** shall keep records of all activities performed pursuant to this Agreement. The records shall be kept in a format approved by the **FDOT**.

Records shall be maintained and made available upon request to the **FDOT** at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the **FDOT** upon request.

**4. Invoicing**

Upon receipt, the **FDOT** has five (5) working days to inspect and approve the goods and services. The **FDOT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Banking and Finance. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the **MAINTAINING AGENCY**. Interest penalties of less than one (1) dollar shall not be enforced unless the **MAINTAINING AGENCY** requests payment. Invoices returned to a **MAINTAINING AGENCY** because of **MAINTAINING AGENCY** preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **FDOT**.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

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## STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT

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The **FDOT**, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money may be paid on such contract. The **FDOT** shall require a statement from the Comptroller of the **FDOT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the **FDOT** which are for an amount in excess of \$25,000 and which have a term for a period of more than one (1) year.

The **FDOT** will provide a copy of the statement referenced above to the **MAINTAINING AGENCY**.

### 5. Default

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by the **FDOT** or the public.
- b. Pursue any other remedies legally available.
- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from the **FDOT** of the non-performance; provided, however, that advance notice and cure shall not be preconditions in the event of an emergency.

### 6. Indemnification

The **MAINTAINING AGENCY**, to the extent allowed by Section 768.28, Florida Statutes, shall indemnify, defend, save, and hold harmless, the State, the **FDOT**, and all of their officers, agents, and employees from all suits, actions, claims, demands, and liabilities of any nature whatsoever arising out of, because of, or due to breach of this Agreement by the **MAINTAINING AGENCY**, its subcontractors, agents, or employees or due to any act or occurrence of omission or commission of the **MAINTAINING AGENCY**, its subcontractors, agents, or employees.

### 7. Force Majeure

Neither the **MAINTAINING AGENCY** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

### 8. Miscellaneous

- a. The **FDOT** shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** shall allow public access to all documents, papers, letters, or other material

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subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **FDOT**.

- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.
- d. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- e. Time is of the essence in the performance of all obligations under this Agreement.
- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

**MAINTAINING AGENCY:**

Board Of County Commissioners  
Monroe County  
1100 Simonton Street, # 2-216  
Key West, Florida 33040  
David S. Koppel, P.E.  
**FDOT:**

Florida Department Of Transportation  
1000 NW 111 AVE  
Miami FL 33172  
Ronald Steiner, P.E.

- g. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- h. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- i. Nothing herein shall be construed as a waiver of either party's sovereign immunity.

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**9. Certification**

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **Maintaining Agency** in the form of additions, deletions or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **Maintaining Agency** hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes To Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- ☐ No changes have been made to this Forms Document and no Appendix entitled "Changes To Form Document" is attached.
- ☒ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Forms Document."

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective the day and year first written.

**MAINTAINING AGENCY**

BY: (Signature)  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

DATE: \_\_\_\_\_  
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY.  
BY: *Suzanne A. Hutton*  
SUZANNE A. HUTTON  
DATE 2/12/03

**Recommend Approval by the FDOT District Office**

BY: (Signature)  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

DATE: \_\_\_\_\_

**FDOT Legal Review**

BY: (Signature)  
District Counsel  
(Typed Name: \_\_\_\_\_)

DATE: \_\_\_\_\_

**EXHIBIT "A"**  
**CHANGES TO FORM DOCUMENT**

1. The "Facilities" described in Item 1, Maintenance of Facilities, Paragraph a. on page 1 of 5, of the State Highway Lighting, Maintenance, and Compensation Agreement shall exclude all lighting in the following municipalities:

1. City of Marathon
2. Islamorada, Village of Islands
3. City of Key West.

2. No other changes are made to the form document.